

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES  
MASTER AGREEMENT FOR  
MULTIVENDOR INFORMATION TECHNOLOGY RECOVERY SERVICES  
INTERNATIONAL BUSINESS MACHINES CORPORATION**

This Master Agreement for Multivendor Information Technology Recovery Services (called the "Master Agreement") is entered into by and between the State of Texas, acting by and through the Department of Information Resources ("DIR") with its principle place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, on behalf of state agencies and local governments and International Business Machines Corporation ("IBM", "Vendor").

This Master Agreement sets forth the terms and conditions governing the acquisition of Multivendor Information Technology Recovery Services resulting from DIR Contracting Posting Document DIR-TMP-03-014.

**1. Master Agreement Term**

The term of this Master Agreement shall be five (5) years commencing on the last date of approval by the Vendor and DIR. Prior to expiration of the original term, the Vendor and DIR may mutually agree to renew this Master Agreement for up to two (2) additional one-year terms. Upon expiration or termination of this Master Agreement, all rights and obligations set forth herein shall survive in accordance with their terms as it relates to Supplemental Agreements entered into by Texas Customers prior to such expiration or termination.

**2. Definitions**

**Annual Period** is the calendar year of September 1<sup>st</sup> through August 31<sup>st</sup>, based on the State fiscal year.

**Configuration** means the equipment, software, workspace, and telecommunications services, so designated in a Supplement. What Vendor provides may not be identical to the Configuration, however, it will be compatible with, and will offer capacity and functionality equivalent to or greater than that of the Configuration.

**Covered Address** means a location where information processing is performed by or for the Texas Customer, and is identified in a Supplement. This address may represent the Texas Customer's facility in a single building, or a physical campus.

**Enterprise** is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.

**Go DIRect Coordinator** is the individual appointed by DIR to administer and collect the Master Agreement reporting data on behalf of the State and the authorized Texas Customers.

**ICA Program** is an IBM Program licensed under Part 4 ("ICA Programs") of the IBM Customer Agreement ("ICA").

**Information Resources Technology (Technologies)** has the meaning as defined in Texas Government Code §2054.003.

**Licensed Internal Code** (called "LIC") is Machine Code used by certain Machines Vendor specifies (called "Specific Machines").

**Machine** is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes a Vendor Machine and any non-Vendor Machine (including other equipment) that Vendor may provide to a Texas Customer.

**Machine Code** is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with a Vendor Machine.

**Materials** are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that Vendor may deliver to a Texas Customer as part of a Service. The term "Materials" does not include Programs, Machine Code, or LIC.

**Other Vendor Program** is a Vendor Program licensed under a separate Vendor license agreement, e.g., IBM International Program License Agreement.

**Outage Emergency** means any unplanned interruption of a Texas Customer's critical business and information processing at a Covered Address, resulting from causes beyond a Texas Customer's control, that significantly impairs the Texas Customer's ability to operate their business.

**Product** is a Machine or a Program.

**Program** is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes any ICA Program, Other Vendor Program, or Non-Vendor Program that Vendor may provide to a Texas Customer. The term does not include Machine Code, LIC, or Materials.

**Recovery Site** means Vendor provided facilities used for Recovery Exercises and recovery. When applicable, Vendor will designate in the Supplement a Primary Recovery Site which, if available, is the site Vendor intends the Texas Customer to use.

**Services** ("Multivendor Information Technology Recovery Services") means, but is not limited to, disaster recovery services, testing, and/or business recovery services that are to be provided by Vendor under this Master Agreement. Cold site services are excluded from this Master Agreement.

**Specifications** is a document that provides information specific to a Product. Vendor provides an IBM Machine's Specifications in a document entitled "Official Published Specifications" and an ICA Program's Specifications in a document entitled "Licensed Program Specifications".

**Specified Operating Environment** is the Machines and programs with which an ICA Program is designated to operate, as described in the ICA Program's Specifications.

**State** means the State of Texas.

**Supplement** is a Transaction Document in which Vendor specifies the details of a Texas Customer's order for Multivendor Information Technology Recovery Services. The details include Configuration, Covered Address, Primary Recovery Site, Contract Period, Start Date, Effective Date, Recovery Exercise Allowance, and applicable charges and rates.

**Supplemental Agreement** is a Supplement or other Transaction Document issued under the terms of this Master Agreement that will be executed by the Texas Customer and the Vendor that will define the specific scope of the Services to be provided and include any additional terms and conditions applicable to the Services ordered. DIR is not a party to the Supplemental Agreements.

**Texas Customer** is any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR Master Agreement through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

**Transaction Document** is a document that provides additional terms and/or details of a Texas Customer's order for Services. Transaction Documents are a part of this Master Agreement. All transactions have one or more associated Transaction Documents (such as an invoice, Supplement, schedule, exhibit, statement of work, change authorization, or addendum).

### **3. Master Agreement Scope**

Vendor provides Multivendor Information Technology Recovery Services to assist a Texas Customer in preparing for and responding to an Outage Emergency at a Covered Address. As part of these Services, Vendor provides equipment and software, support services, telecommunications services, and a facility, in combinations a Texas Customer selects, to assist the Texas Customer in their performance of their critical business and information processing activities in the event of an Outage Emergency.

A Supplemental Agreement (Supplement and/or other Transaction Document) will be executed by the Texas Customer and the Vendor that will define the specific scope of the Services to be provided. A Supplement will specify the details of a Texas Customer's order for Multivendor Information Technology Recovery Services including the Configuration, Covered Address, Primary Recovery Site, Contract Period, Start Date, Effective Date, Recovery Exercise Allowance, and applicable charges and rates. A Supplemental Agreement may also include additional terms and conditions applicable to the Services ordered.

This Master Agreement is available for use by all Texas Customers.

### **4. Order Processing**

All Texas Customer purchase orders and Supplemental Agreements will be placed directly with the Vendor. Vendor shall provide Services only after the Supplemental Agreement has been signed by both the Texas Customer and the Vendor and

the acceptance by Vendor of a valid Texas Customer purchase order. Texas Customers shall reference said Master Agreement number, DIR-SC-03-226, on all purchase orders and Supplemental Agreements.

## **5. Vendor Responsibilities**

### **A. Acceptance of Subscription and Supplement**

Vendor accepts the Texas Customer's order for Services ("Subscription") by issuing a Supplement for the Configuration. The Vendor and Texas Customer must sign the initial Supplement for a Configuration for the Supplement to be effective.

If the initial Supplement for a Configuration includes equipment not currently available at the Primary Recovery Site, and Vendor cannot provide compatible equipment of equivalent or greater capacity and functionality, Vendor will initiate its acquisition process for such equipment immediately following signing of the Supplement. If such equipment is not yet installed when a Texas Customer declares an Outage Emergency, Vendor will use commercially reasonable efforts to provide alternate equipment, or the Configuration at another facility.

A request to change any detail of a Supplement requires one (1) month's written notice. If Vendor agrees, Vendor will confirm the change by sending the Texas Customer, a revised Supplement specifying the effective date of the change and the adjusted charge. The Texas Customer must sign the revised Supplement and submit back to the Vendor. Vendor will not unreasonably withhold its agreement to the revision. The adjusted charge will not be less than the Minimum Total Monthly Charge specified in a Supplement. Although Vendor requests the Texas Customer's signature on a revised Supplement, either a signature or payment of the adjusted charge or use of the Services, whichever occurs first after Vendor sends a revised Supplement, constitutes the Texas Customer's acceptance of that revised Supplement.

### **B. Recovery Exercise Time**

Vendor provides time that the Texas Customer requests for the Texas Customer to exercise their recovery plan, procedures and operation ("Recovery Exercise", "Exercise"). For each Recovery Exercise, Vendor makes the Configuration available to the Texas Customer in contiguous four-hour blocks, scheduled as the Vendor and Texas Customer mutually agree. The Texas Customer may schedule the number of hours and Exercises as specified in the Supplement (collectively called "Recovery Exercise Allowance"). The Texas Customer agrees that Vendor may reschedule the Texas Customer's Exercise to serve another client who has declared an Outage Emergency. If the Texas Customer requests additional hours or additional Exercises, beyond the Texas Customer's annual Recovery Exercise Allowance, Vendor will provide it on an "as available" basis for a charge that is specified in the Supplement.

### **C. Recovery**

The Texas Customer shall notify Vendor that they are experiencing an Outage Emergency by calling the toll-free number Vendor provides ("Declare"). Vendor will begin to prepare, without delay, Recovery Site facilities for the Texas Customer's use. The Texas Customer may have immediate access to the Recovery Site Vendor makes available. Vendor will use commercially reasonable efforts to provide the Configuration as soon as the Texas Customer is ready to use it and will provide it no later than twenty-four (24) hours after the Texas Customer Declares.

Vendor will provide the Configuration for the Texas Customer's use at the Recovery Site for a maximum of six (6) consecutive weeks after the Texas Customer makes a Declaration. The Texas Customer will have priority access to the Configuration over any client, except one who has Declared before the Texas Customer.

### **D. Technical and Operational Support for Recovery and Recovery Exercise**

Vendor provides a single point of contact that will coordinate support activities prior to, during, and following an "Event" (an Exercise or the Texas Customer's recovery). Prior to an Event, Vendor will assist in planning and preparation as described in documentation Vendor will provide. Vendor will create connectivity descriptions and, where applicable, a document that defines how the equipment in the Texas Customer's Configuration is mapped to the equipment Vendor provides. Prior to the Event, Vendor will set up and check out physical connectivity of the equipment to verify that what Vendor provides is connected as set forth in the documentation. During an Event, personnel on-site and on-call will assist with problem determination related to the hardware and software Vendor provides with the Configuration, and Vendor will track issues and problems related to Vendor's provision of Services during the Event. Following an Event, Vendor will participate in a review, at the Texas Customer's request. For an Exercise as well as the Texas Customer's recovery, a contact person Vendor provides will be on-site or on-call twenty-four (24) hours per day from the time the Texas Customer Declares or begins the Exercise until the Event ends.

Vendor will provide a work area, as specified in a Supplement, for the Texas Customer's use.

### **E. Product Removal and Upgrade**

Vendor will give the Texas Customer six (6) months' written notice of its intent to no longer provide an item in the Texas Customer's Configuration and also not provide a compatible substitute item that offers equal or greater capacity and functionality. In such circumstance, the Texas Customer may terminate the applicable Supplement, upon three (3) months'

written notice, within one (1) year of such notification.

When Vendor introduces new replacement hardware, and the Texas Customer has a requirement for the new technology, i.e. new tape or disk technology, the Texas Customer shall expect to have full use of the new technology without additional costs upon the expiration of six (6) months from notification to Vendor.

## **6. Texas Customer Responsibilities**

The Texas Customer agrees to:

1. notify the Vendor that the Texas Customer is declaring an Outage Emergency by calling the toll-free number Vendor provides;
2. be responsible for determining, on a continuing basis, whether the Configurations specified in the Supplements in effect between the Texas Customer and Vendor are sufficient for the Texas Customer to meet the requirements for continuing the Texas Customer's business and information processing activities in response to an Outage Emergency at each Covered Address;
3. be responsible for providing during an Event any equipment, software, workspace, and/or telecommunications services that the Texas Customer may need that is not included in the Configurations specified in the Supplements in effect between the Texas Customer and Vendor;
4. supply all personnel and appropriately licensed software necessary for an Event, unless otherwise specified in a Supplement;
5. maintain the Texas Customer's system software and operating system(s) that the Texas Customer intends to use for an Event, at a release level for which the manufacturer then currently provides support. The Texas Customer's ability to make use of the Configuration Vendor provides may be dependent on the Texas Customer's fulfillment of this responsibility;
6. furnish supplies, materials, and storage media necessary for the Texas Customer's Event;
7. follow procedures and instructions, including those for safety and security, Vendor provides to the Texas Customer for: (a) scheduling and preparation for Recovery Exercises, (b) an Event, and (c) use of the Recovery Site; and,
8. remove the Texas Customer's data and software from the Configuration following an Event.

## **7. General Principles of the Relationship**

As used herein, the term "State" shall mean both the DIR and the Texas Customer.

1. Neither the Vendor nor the State grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
2. All information exchanged is nonconfidential. If either the Vendor or the State requires the exchange of confidential information, it will be made under a signed confidentiality agreement.
3. The Vendor and the State are free to enter into similar agreements with others.
4. The Vendor and the State grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
5. The Vendor and the State may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.
6. The Vendor and the State will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations.
7. Unless otherwise specified in a Supplemental Agreement between the Vendor and a Texas Customer, neither the Vendor nor the State will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose.
8. Neither the Vendor nor the State is responsible for failure to fulfill any obligations due to force majeure.
9. Neither the Vendor nor the Texas Customer may assign the Supplemental Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither the Vendor nor the Texas Customer will unreasonably withhold such consent. The assignment of the Supplemental Agreement, in whole or in part, within the Enterprise of which either the Vendor or Texas Customer is a part or to a successor organization by merger or acquisition does not require the consent of the other. Vendor is also permitted to assign its rights to payments under the Supplemental Agreement without obtaining the Texas Customer's consent. It is not considered an assignment for Vendor to divest a portion of its business in a manner that similarly affects all of its clients. If the Vendor/Enterprise

changes or the Vendor/Enterprise to whom payments are owed changes, the Vendor/Enterprise shall cooperate with the Texas Customer to supply all information necessary to ensure proper payment.

10. The State agrees not to resell these Services without IBM's prior written consent. Any attempt to do so is void.
11. The State agrees that the Master Agreement and any Supplemental Agreements will not create any right or cause or cause of action for any third party, nor will Vendor be responsible for any third party claims against the State except as described in the Patents and Copyrights section below or as permitted by the Limitation of Liability section below for bodily injury (including death) or damage to real or tangible personal property for which Vendor is legally liable.
12. The State agrees to be responsible for the results obtained from the use of these Services.
13. The Texas Customer agrees to provide Vendor with sufficient, free, and safe access to the Texas Customer's facilities and systems, as needed, for Vendor to fulfill its obligations. Vendor shall perform work at a Texas Customer's facility in such a manner as to preserve the safety, security and integrity of the personnel, equipment, premises, data, and other property of the Texas Customer, in accordance with instruction by the Texas Customer. Prior to granting Vendor access to certain Texas Customers' facilities, background and/or criminal history investigation of Vendor's employees and/or Vendor's subcontractor's employees who will perform work at such Texas Customers' facilities may be performed by certain Texas Customers having legislative authority to require such investigations.
14. The Texas Customer agrees to comply with all applicable export and import laws and regulations.

## **8. Contract Term of the Vendor and Texas Customer Relationship**

### **A. Contract Period**

The Start Date and End Date of the Contract Period for a Subscription and the Supplement Effective Date are set forth in the Supplement.

### **B. Renewal**

Vendor will issue the Texas Customer a renewal Supplement or give the Texas Customer written notice of Vendor's intention not to renew a Subscription at least three (3) months before its End Date. If the Texas Customer does not intend to renew a Subscription, the Texas Customer must notify Vendor in writing at least one (1) month prior to the End Date, and if the Texas Customer does not so notify Vendor, the Texas Customer will be deemed to have renewed under the terms of the renewal Supplement that Vendor has issued.

### **C. Termination for Cause**

The Texas Customer shall have the right to terminate a Subscription before its End Date only if Vendor has failed to cure, after the Texas Customer has given written notice and allowed ninety (90) days for Vendor to do so, a material breach of Vendor's obligations with respect to such Subscription.

The Texas Customer will agree to pay Vendor for 1) all Services Vendor provides through Service termination, 2) all expenses Vendor incurs through Service termination, and 3) any charges Vendor incurs in terminating the Service.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

### **D. Termination for Non-Appropriation**

Notwithstanding any other provision of this Master Agreement, the Texas Customer may terminate a Supplemental Agreement if funds sufficient to pay obligations under such Supplemental Agreement are not appropriated by the legislative body on behalf of local governments, or by the Texas Legislature on behalf of state agencies. The Texas Customer may terminate the Supplemental Agreement without incurring liability, except to pay for Services already rendered by Vendor or for Services that are specifically excluded from termination when notification is provided to Vendor. In the event of non-appropriation, Vendor will be provided thirty (30) days written notice of intent to terminate.

## **9. Charges for the Vendor and Texas Customer Relationship**

The amount payable for Services is based on a recurring charge, which is billed in advance. Associated charges are outlined below.

### **A. Total Monthly Charge**

The Texas Customer shall agree to pay the Total Monthly Charge, specified in a Supplement, for each month of a Contract Period.

**B. Recovery Charges**

In addition to the Total Monthly Charge, the Texas Customer shall agree to pay an Initial Recovery Charge and a Daily Recovery Charge specified in a Supplement. The Initial Recovery Charge is incurred when Vendor confirms to the Texas Customer that Vendor has scheduled a Recovery Site for the Texas Customer's use in response to the Texas Customer's declaration of an Outage Emergency. For this charge, Vendor makes the Configuration available to the Texas Customer for up to the number of days specified in a Supplement. Thereafter, for each day, or part thereof, that Vendor provides to the Texas Customer the Configuration, the Daily Recovery Charge applies.

**C. Additional Charges**

The Texas Customer shall agree to pay:

1. any associated charges for telecommunications services the Texas Customer may select;
2. charges for additional hours and Exercises the Texas Customer schedules beyond the annual Recovery Exercise Allowance specified in the Supplement;
3. charges for operational and technical assistance beyond that described in this Attachment and the applicable Supplement, that Vendor agrees to provide during an Event, in response to the Texas Customer's written request; and
4. charges for miscellaneous expenses the Texas Customer may incur while at a Recovery Site, for use of items such as supplies, materials, storage media or for use of office equipment, telephone and facsimile.

**D. Price Changes**

Vendor will not increase the charges for the Configuration and terms specified in a Supplement during the first year of a Contract Period. Thereafter, on subsequent anniversaries of the Start Date of the Contract Period, Vendor may increase such charges by no more than five percent (5%), by giving the Texas Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date Vendor specifies in the notice. The Texas Customer constitutes acceptance of the Vendor's price increase notification by either i) written notice, ii) payment of the invoice, or iii) use of the Services; whichever occurs first.

The Texas Customer shall receive the benefit of a decrease in charges for amounts which become due on or after the effective date of the decrease.

**10. Invoicing for the Vendor and Texas Customer Relationship**

Vendor invoices shall be submitted directly to the Texas Customer and shall be issued by the Vendor in compliance with Chapter 2251, Texas Government Code. Invoices must be timely and accurate. Each invoice must match Texas Customer's order and include the Texas Customer's Purchase Order number, Supplemental Agreement term, Supplemental Agreement Number, and/or other pertinent information for verification of receipt of the invoice by the Texas Customer.

Per Section 151.309, Texas Tax Code, Texas Customers under this Agreement are exempt from the assessment of State and local sales, use and excise taxes. Further, Texas Customers under this Agreement are exempt from Federal Excise Taxes, 26 USC Sections 4253(i) and 4253(j).

If any authority lawfully imposes a duty, tax, levy, or fee, excluding those based on Vendor's net income, upon any transaction under this Master Agreement, then the Texas Customer shall agree to pay that amount as specified in an invoice or supply exemption documentation.

**11. Payment for the Vendor and Texas Customer Relationship**

Texas Customer payments for Services shall be made on an annual basis in advance for each year of the Service. All payments for services purchased under this Master Agreement, and any provision of acceptance of such services shall be made directly to the Vendor by the Texas Customer. Payments must be made for each year of the Services as defined within each Texas Customer's Supplemental Agreement. Texas Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor and amounts are due upon receipt of an accurate invoice and payable as Vendor specifies in a Transaction Document. The Texas Customer agrees to pay accordingly, including any late payment fees that may be applicable. Payment under this Master Agreement shall not foreclose the right to recover wrongful payments.

**12. Other Terms of the Vendor and Texas Customer Relationship**

**A. Access to Services**

For purpose of access priority and interruption of Recovery Exercise Time, "Services customer" and "Outage Emergency" under this Master Agreement shall include, but not be limited to, "Business Recovery Services ("BRS") customer" and "Disaster", respectively, as defined in previous versions of the Vendor's Attachment for Business Recovery Services.

The Texas Customer and DIR agree to allow Vendor and its subsidiaries to store and use the Texas Customer's and DIR's business contact information, including names, business phone numbers, and business e-mail addresses, anywhere the Vendor or its subsidiaries do business. Such information will **only** be processed and used in connection with the Vendor and Texas Customer's or DIR's business relationship, and may be provided to contractors acting on Vendor's behalf, Vendor's Business Partners who promote, market, and support certain Vendor products and services, and assignees of Vendor and its subsidiaries for uses consistent with the Vendor and Texas Customer's or DIR's business relationship.

#### **B. Security**

Vendor will follow reasonable security practices and procedures to protect the Texas Customer's physical assets while the Texas Customer's physical assets are in Recovery Sites. Such protection includes providing security at the Recovery Site that allows access only to those persons authorized either by Vendor or by the Texas Customer and Vendor. This security will be in place twenty-four (24) hours a day, seven (7) days a week.

#### **C. Notification**

All written notices required by the Supplement to be sent to the Texas Customer will be addressed to the Texas Customer signatory, unless and until the Texas Customer informs Vendor in writing of a different person and address to which such notices must be sent. All written notices to Vendor must be sent to the Vendor addressee identified in the applicable Supplement. Any such notices may be sent by electronic means and, as such, will be considered a signed writing. Both Vendor and the Texas Customer agree to inform each other of any changes to addressee information within one (1) month of such change.

#### **D. Personnel**

The Vendor and Texas Customer are each responsible for the supervision, direction, control, and compensation of their respective personnel.

Vendor reserves the right to determine the assignment of its personnel.

Vendor may subcontract these Services, or any part of them, to subcontractors selected by Vendor. If Vendor utilizes any subcontractors other than those specified in the DIR HUB Subcontracting Plan submitted as part of Vendor's bid response to DIR Agreement Posting DIR-TMP-03-014, Vendor shall obtain advance written authorization from the State administrator.

#### **E. Changes to the Supplement Terms**

In order to maintain flexibility in the Vendor and Texas Customer business relationship, Vendor may change the terms of the Supplement by giving the Texas Customer three months' written notice. However, these changes are not retroactive. The changes apply, as of the effective date Vendor specifies in the notice, only to new orders, renewals, and on-going transactions that do not expire. For on-going transactions with a defined renewable contract period, the Texas Customer may request that Vendor defer the change effective date until the end of the current contract period if 1) the change affects the Texas Customer's current contract period and 2) the Texas Customer considers the change unfavorable. Changes to charges will be implemented as described in the Charges section above.

Otherwise, for a change to be valid, both the Vendor and the Texas Customer must sign it. Additional or different terms in any written communication from the Texas Customer, such as an order, are void.

#### **F. Vendor Business Partners**

Vendor has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support these Services. When a Texas Customer orders these Services (marketed to you by Vendor's Business Partners) under this Master Agreement, Vendor confirms that it is responsible for providing such Services to you under the warranties and other terms of this Master Agreement. Vendor is not responsible for 1) the actions of Vendor Business Partners, 2) any additional obligations they have to the Texas Customer, or 3) any products or services that they supply to a Texas Customer under the Vendor Business Partner's agreements.

### **13. Patents and Copyrights**

If a third party claims that Materials Vendor provides to a Texas Customer infringe that party's patent or copyright, Vendor will defend Texas Customer against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by Vendor, provided that Texas Customer:

1. Promptly notifies Vendor in writing of the claim; and

2. allow Vendor to control, and cooperate with Vendor in, the defense and any related settlement negotiations.

**A. Remedies**

If such a claim is made or appears likely to be made, Texas Customer agrees to permit Vendor to enable Texas Customer to continue to use the Materials, or to modify them, or replace them with Materials that are at least functionally equivalent. If Vendor determines that none of these alternatives is reasonably available, Texas Customer agrees to return the Materials to Vendor on its written request. Vendor will then give Texas Customer a credit equal to the amount Texas Customer paid Vendor for the creation of the Materials.

This is Vendor's entire obligation to a Texas Customer regarding any claim of infringement.

**B. Claims for Which Vendor is Not Responsible**

Vendor has no obligation regarding any claim based on any of the following:

1. Anything a Texas Customer provides which is incorporated into the Materials or Vendor's compliance with any designs, specifications, or instructions provided by the Texas Customer or by a third party on the Texas Customer's behalf;
2. the Texas Customer's modification of the Materials; or
3. the combination, operation, or use of the Materials with any product, data, apparatus, or business method that Vendor did not provide, or the distribution, operation or use of the Materials for the benefit of a third party outside the Texas Customer's organization.

**14. Warranty**

Vendor warrants that it performs these Services using reasonable care and skill and according to its current description contained in this Master Agreement and a Supplement.

The warranty stated above will not apply to the extent that there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Texas Customer, or failure caused by a product for which Vendor is not responsible.

**THIS WARRANTY IS THE TEXAS CUSTOMER'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Vendor does not warrant uninterrupted or error-free operation of a Product or Service or that Vendor will correct all defects.

Unless Vendor specifies otherwise, it provides Materials, non-Vendor Products, and non-Vendor Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-Vendor manufacturers, developers, suppliers, or publishers may provide their own warranties to the Texas Customer. Warranties, if any, for Other Vendor Programs and Non-Vendor Programs may be found in their license agreements.

**15. Materials Ownership and License**

Vendor will specify Materials, if any, to be delivered to a Texas Customer. All Materials provided under this Master Agreement or Supplemental Agreement will be considered Type II Materials.

Type II Materials are those created during the Service performance period or otherwise (such as those that preexist the Service), in which Vendor or third parties have all right, title, and interest (including ownership of copyright). Vendor will deliver one copy of the specified Materials to the Texas Customer. Vendor grants the Texas Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the Texas Customer's organization only, copies of Type II Materials.

The Texas Customer agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

**16. Master Agreement Administration**

DIR and the Vendor will each provide a Contract administrator to support this Master Agreement. Information regarding the administrators will be posted on the Internet web site designated for this Master Agreement. Upon sixty (60) days from



execution of the Master Agreement, Vendor will be required to notify the State Administrator of the representative's information that will be the Vendor's Administrator.

**A. State Administrator**

DIR shall provide an administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Master Agreement, ii) advising DIR of Vendor's performance under the terms and conditions of this Master Agreement, iii) facilitate dispute resolution between the Vendor and Customer, and iv) periodic verification of the Master Agreement utilization reports and applicable administrative fees submitted by the Vendor.

**B. Vendor Administrator**

Vendor shall provide an administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Master Agreement, and ii) facilitating dispute resolution between the Vendor and a Texas Customer. DIR reserves the right to request a change in Vendor's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State.

**17. Internet Access to Master Agreement Information**

Access by Texas Customers to Master Agreement terms shall be made available and posted on the Internet. To that end, upon sixty (60) days from execution of the Master Agreement, Vendor will be required to host the complete Master Agreement at Vendor's Internet site. Internet access to this information will be provided including all subsequent changes to the Master Agreement during the term of this Master Agreement at no cost to DIR, the State, and Texas Customers.

**A. Web Site Compliance Checks**

Periodic compliance checks of the information posted for this Master Agreement on Vendor's web site will be conducted by DIR. Upon request by DIR, Vendor shall update or modify the information posted to accurately convey the requirements of this Master Agreement.

**B. Web Site Changes**

Vendor hereby consents to a link from the DIR web site to Vendor's web site in order to facilitate access to the Master Agreement information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

**C. Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's web site. Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR requires Vendor to list all information on the web site, such as: company name, address, contact information, phone and fax number, email address, State Vendor ID number, and other applicable information as mutually agreed to by DIR and Vendor. DIR also reserves the right to request a change of listed content if, in the opinion of DIR, it does not adequately represent this Master Agreement.

**18. Reporting and Administrative Fees**

Vendor shall be responsible for reporting all Services purchased under this Master Agreement. The failure to file the reports described below and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the Master Agreement for cause. If Vendor submits three (3) consecutive reports with material deficiencies, DIR reserves the right to suspend or terminate this Master Agreement for cause. Vendor's liability for any breach of this section is limited solely to the amount of administrative fees owed to DIR by Vendor.

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Master Agreement records.

**A. Customer's Supplemental Agreement**

Vendor shall submit a copy of each Texas Customer's Supplemental Agreement under this Master Agreement, and any amendments thereafter, to the State Administrator, within thirty (30) days after execution by the Texas Customer and the Vendor.

**B. Detailed Quarterly Sales Report**

Vendor shall electronically provide DIR with a detailed sales report for each quarter of the State's Annual Period, as defined in Section 2, in a format as required by DIR. The report shall detail all sales under the Master Agreement for the previous quarter. Reports shall be submitted to the DIR Go DIRect Coordinator and shall be due quarterly in compliance with the following schedule based on the State's Annual Period;

1. September – November: report due by December 31<sup>st</sup>
2. December – February: report due by March 31<sup>st</sup>
3. March – May: report due June 30<sup>th</sup>
4. June – August: report due September 30<sup>th</sup>

The report shall include the Vendor's company name, each Texas Customer's name, the Start Date and End Date of the Contract Period for a Subscription as indicated in the Supplement(s) included in the Texas Customer's Supplemental Agreement, annual amount of Total Monthly Charges specified in a Supplement, Texas Customer's Purchase Order number, Texas Customer's contact name, Texas Customer's complete billing address, and any other information mutually agreed to by DIR and the Vendor. Each quarterly report must contain all information listed above or the report will be rejected and returned to the Vendor for correction.

**C. DIR Administrative Fee**

An administrative fee shall be collected by Vendor on behalf of the DIR, to defray the DIR costs of negotiating, executing, and administering this Master Agreement. All prices of services quoted to Texas Customers shall include the administrative fee. The administrative fee shall not be broken out as a separate line item when pricing or invoicing is provided to the Texas Customer. DIR reserves the right to change this fee upwards or downwards during the term of this Master Agreement, upon sixty (60) days advance written notice to Vendor. Any change in the administrative fee will apply to Services price proposals submitted to Texas Customers after the effective date of the change in the DIR administrative fee. Changes to the administrative fee will not apply to any Supplemental Agreements signed prior to the effective date of the change in the DIR administrative fee or to any Supplemental Agreements that result from price proposals submitted to Texas Customers prior to the effective date of the change in the DIR administrative fee.

The DIR administrative fee for this Master Agreement is two percent (2%) of the Net Texas Customer Payments for Services under this Master Agreement received by Vendor during the quarterly period. "Net Texas Customer Payments" shall be calculated by subtracting from the gross Texas Customer payments for the quarterly period any amounts refunded to Texas Customers. The check for the DIR administrative fee will be made payable to the "Texas Department of Information Resources" and will be submitted by the Vendor to the DIR by the last day of the month following the end of the quarterly period. For example, if the quarterly period ends on November 30, the administrative fee would be due on December 31.

**D. Historically Underutilized Business Subcontract Reports**

Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Master Agreement, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

Reports shall be due quarterly in compliance with the following schedule, or as requested by each ordering Customer:

- September – November: due by December 31<sup>st</sup>
- December – February: due by March 31<sup>st</sup>
- March – May: due June 30<sup>th</sup>
- June – August: due September 30<sup>th</sup>

**19. Records and Audit**

The Vendor shall maintain adequate records to (1) support billings to, and payments received from, Texas Customers under Supplemental Agreements, and (2) to support the calculation and payment to DIR of the administrative fee under this Master Agreement. Records shall be maintained for a period of three (3) years from the date of billing to a Texas Customer or date of payment of the DIR administrative fee or until full, final and unappealable resolution of all audits or litigation issues that arose prior to the end of the three (3) year period, whichever is later.

Vendor shall grant access to the records described above for the purposes of determining Vendor's compliance with this agreement. Copies and printouts requested by DIR shall be provided by Vendor without charge. DIR shall provide Vendor

twenty (20) business days' notice prior to inspecting, compliance checking, and/or copying Vendor's applicable records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to DIR staff and designees as needed. Vendor shall provide adequate office space to DIR staff during the performance of compliance check, if needed. Vendor shall have no obligation to provide access to Vendor or third party confidential or proprietary information. The State shall be responsible for the State's expenses associated with performing any audits.

Vendor understands that acceptance of funds under this Master Agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all relevant records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to this Master Agreement.

## **20. Limitation of Liability**

Circumstances may arise where, because of a default on Vendor's part or other liability, the Texas Customer or DIR shall be entitled to recover damages from Vendor.

If Vendor is unable to provide the Texas Customer Services as described in Section 5 ("Vendor Responsibilities) subsection "Recovery" above, and the Texas Customer elects not to accept such services when Vendor can provide them, Vendor will pay the Texas Customer an amount equal to the Total Monthly Charges that the Texas Customer has paid under the applicable Supplement for the preceding twelve (12) months. This is the Texas Customer's exclusive remedy for Vendor's failure to provide the Texas Customer such recovery services.

In any other circumstance, regardless of the basis on which the Texas Customer or DIR is entitled to claim damages from Vendor (including fundamental breach, negligence, misrepresentation, or other Agreement or tort claim), Vendor is liable for no more than:

1. payments referred to in the Patents and Copyrights section above;
2. damages for bodily injury (including death) and damage to real property and tangible personal property; and
3. the amount of any other direct damages up to the greater of \$100,000 or 12 months' Total Monthly Charges for the Subscription that is the subject of the claim.

This limit also applies to any of Vendor's subcontractors and Program developers. It is the maximum for which Vendor and its subcontractors and Program developers are collectively responsible.

### **Items for Which Vendor is Not Liable**

Under no circumstances is Vendor, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

1. third party claims against the Texas Customer or DIR for damages except as described in the Patents and Copyrights provision referred to in paragraph 1 above or as permitted in paragraph 2 above for bodily injury (including death) or damage to real or tangible personal property for which Vendor is legally liable;
2. loss of, or damage to, data;
3. special, incidental, or indirect damages or for any economic consequential damages; or
4. lost profits, business, revenue, goodwill, or anticipated savings.

## **21. Vendor Certifications**

Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Master Agreement; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges this Master Agreement may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Master Agreement; (v) it is not ineligible to receive this Master Agreement under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Master Agreement; and (viii) to the best of the Vendor's knowledge and belief, there are no suits or proceedings pending or

threatened against or affecting the Vendor, which if determined adversely to the Vendor will have a material adverse effect on the ability of the Vendor to fulfill its obligations under this Master Agreement.

## **22. Ability To Conduct Business In Texas**

The Vendor is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Vendor is a "Catalog Information Systems Vendor" as defined in §2157.001, Texas Government Code. All services offered to Texas Customers under this Master Agreement are listed in Vendor's catalogue on file with the Texas Building and Procurement Commission.

## **23. Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under this Master Agreement. If Vendor is found to be not in compliance with these requirements during the term of this Master Agreement, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

## **24. Force Majeure**

DIR, Texas Customer, or Vendor may be excused from performance under this Master Agreement for any period when performance is prevented as the result of an act of God, or other causes beyond its control such as strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

## **25. Texas Public Information Act**

Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

## **26. No Quantity Guarantees**

This Master Agreement is not exclusive to the named Vendor. Texas Customers may obtain Information Resources Technologies from other sources during the Master Agreement term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Master Agreement

## **27. Trade Show Participation**

Vendor understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR Business Operations Division each calendar year at the Vendor's expense. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Vendor's booth.

## **28. DIR LOGO**

Vendor may use the DIR Go DiRect logo in the promotion of this Master Agreement to Texas Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or

smaller than the Vendor logo; (iii) the DIR logo is only used to communicate the availability of services under this Master Agreement to Texas Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

## **29. Use of Subcontractors**

Vendor may subcontract services under this Master Agreement. However, Vendor shall remain solely responsible for the performance of its obligations under this Master Agreement. All Texas Customer payments for services shall be made directly to the Vendor. The Vendor shall be responsible for all payments to subcontractors. If Vendor uses any subcontractors other than those specified in Vendor's bid response to DIR TMP 03 014, Vendor shall obtain advance written authorization from the State Contract Administrator. Vendor shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan associated with this Contract.

## **30. Handling of Written Complaints**

In addition to other remedies contained in this Master Agreement, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, TX 78701  
(512) 475-4700, voice  
(512) 475-4759, fax

## **31. Enforcement of Master Agreement and Dispute Resolution**

Vendor and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Master Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Master Agreement; (iv) actions or proceedings arising from this Master Agreement shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

## **32. Termination for Convenience**

Either DIR or Vendor may terminate this Master Agreement, in whole or in part, by giving the other party thirty (30) days written notice. Texas Customer shall not have the right to termination for convenience under their Supplemental Agreements.

## **33. Termination for Cause**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Master Agreement or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Master Agreement. Texas Customers hereunder have no power to terminate this Master Agreement for default. Texas Customer's rights are exclusively based on the termination for cause term set forth in Section 8 ("Contract Period"), subsection "C. Termination" of this Master Agreement.

## **34. Texas Customer Rights Under Termination**

In the event this Master Agreement expires or is terminated for any reason, a Texas Customer shall retain its rights under the Supplemental Agreement entered into with respect to all services ordered and accepted prior to the effective termination date, but no new Supplemental Agreements may be entered into by the Vendor and any Texas Customer.

### **35. Vendor Rights Under Termination**

In the event this Master Agreement expires or is terminated for any reason, a Texas Customer shall pay all amounts due for services ordered prior to the effective termination date and ultimately accepted.

### **36. Survival**

All Supplemental Agreements that are entered into between Vendor and a Texas Customer under the terms and conditions of this Master Agreement shall survive the termination or expiration of this Master Agreement. Any provisions of this Master Agreement shall survive termination or expiration for the benefit of any Supplemental Agreement entered hereunder.

### **37. Entireties**

This Master Agreement supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Master Agreement.

### **38. Modification of Master Agreement Terms and and/or Amendments**

The terms and conditions set forth in the Master Agreement shall govern all transactions by Texas Customers under this Master Agreement. The Master Agreement may only be modified or amended upon mutual agreement of DIR and Vendor. Additional Texas Customer terms and conditions, which do not conflict with the Master Agreement, may be stated within the Texas Customer's Supplemental Agreement and given effect.

### **39. Non-Assignment Clause**

Neither Vendor nor DIR may assign this Master Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither Vendor nor DIR will unreasonably withhold such consent. The assignment of the Master Agreement, in whole or in part, within the Enterprise of which either Vendor or DIR is a part or to a successor organization by merger or acquisition does not require the consent of the other. It is not considered an assignment for Vendor to divest a portion of its business in a manner that similarly affects all of its customers.

### **40. Invalid Term or Condition**

If any term or condition of this Master Agreement is held to be invalid or unenforceable, the remaining provisions of this Master Agreement shall remain in full force and effect.

### **41. Geographic Scope and Governing Law**

The rights, duties, and obligations of the Texas Customers, DIR and Vendor are valid only in the United States except that all licenses are valid as specifically granted.

Texas Customers, DIR and Vendor consent to the application of the laws of the State of Texas to govern, interpret, and enforce all rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Master Agreement, without regard to conflict of law principles.

Nothing in this Master Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

### **42. Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Master Agreement shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Master Agreement by giving fifteen (15) days written notice to the other party.

If sent to the State:

Patrick W. Hogan

If sent to the Vendor:

N. K. (Duke) Presley

Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Fax: (512) 475-4759  
Email: [patrick.hogan@dir.state.tx.us](mailto:patrick.hogan@dir.state.tx.us)

IBM Corporation  
13800 Diplomat Drive  
Dallas, Texas 75234  
Phone: (214) 691-1067  
Fax: (214) 691-6813  
Email: [dukep@us.ibm.com](mailto:dukep@us.ibm.com)

By signing below for our respective Enterprises, both of us agree to the terms of this Master Agreement. Once signed, 1) any reproduction of this Master Agreement or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Subscriptions you order under this Master Agreement are subject to it.

This Master Agreement and its applicable Transaction Documents, and any Amendment(s) and associated Transaction Documents, including those effective in the future, are the complete agreement regarding Multivendor Information Technology Recovery Services, and replace any prior oral or written communications between us.

**Agreed to:**

THE STATE OF TEXAS, acting by and through the  
Department of Information Resources

By:   
Authorized Signature

Name: Patrick W. Hogan  
(Type or Print)


Title: Director of Business Operations  
(Type or Print)

Date: 12-5-03

Customer Number:  
Enterprise Number: 8799000

**Address:**

300 West 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701

  
8/12/4/03

**Agreed to:**

International Business Machines Corporation

By:   
Authorized Signature

Name: N. K. Presley  
(Type or Print)

Title: Client Executive  
(Type or Print)

Date: 12/02/2003

Agreement Number:

IBM Marketing Number:  
Address:

Attn: BCRS Contract Operations  
IBM Corporation  
PO Box 700  
Suffern, NY 10901-0700  
e-mail: [ibmbcrs@us.ibm.com](mailto:ibmbcrs@us.ibm.com)



**Historically Underutilized Businesses  
Subcontracting Plan (Form 1)**

**This form is required as part of the Historically Underutilized Businesses (HUB) Subcontracting Plan. Failure to include this form and the applicable forms specified herein will result in automatic disqualification of your response to the offering document.**

Vendor Company Name: International Business Machines Corporation

Vendor Identification Number: 1130871985200/44200

Department of Information Resources Offering Document Number: DIR-TMP-03-014

1. The Department of Information Resources has determined that HUB subcontracting opportunities are probable. Is your company proposing to subcontract any portion of this contract?

☐ Yes – Complete the following forms:  
Determination of Good Faith Effort (Form 2)  
Solicitation of HUB Subcontractors (Form 3)  
Selected Subcontractors (Form 4)

What percentage of the proposed work is to be performed by your company? \_\_\_\_

☒ No – Complete the Statement of Intent (Form 5)

2. Is your company certified as a HUB by the State of Texas?

☐ Yes ☒ No

I have read and understand the Department of Information Resources' Policy on Utilization of HUBs.

Charles Ashley

Authorized Representative Name

IBM Client Representative

Authorized Representative Title

Authorized Representative Signature

February 14, 2003

Date





**HUB Subcontracting Plan  
Statement of Intent (Form 5)**

Vendor Company Name: International Business Machines Corporation

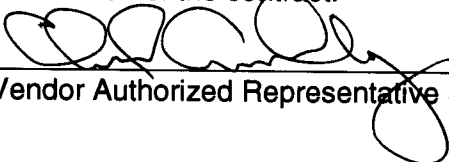
Department of Information Resources Offering Document Number: DIR-TMP-03-014

By completing the following Statement of Intent, the potential vendor HUB Subcontracting Plan is considered responsive, qualified, and/or valid.

**Statement of Intent:**

I, Charles Ashley, an authorized representative of International Business Machines Corporation has reviewed the offering document and have determined that the entire work of the contract will be completed with IBM's own employees and resources without subcontracting any portion of the contract.

If, after award of the contract, an individual eligible customer's circumstances necessitate the use of any subcontractors, the Department of Information Resources will be notified in writing. VENDOR will comply with the provisions of 1 TAC §111.14(b) relating to developing and submitting a subcontracting plan before any modifications to the HSP can be considered by the Department of Information Resources. If VENDOR subcontracts any of the work under the awarded contract without prior Department of Information Resources authorization and compliance of 1 TAC §111.14(b), VENDOR may be considered in breach of the awarded contract an subject to any remedial actions provided by state law and HUB rules, possibly including termination of the contract.

  
Vendor Authorized Representative Signature

February 14, 2003  
Date